

No. 14/13/87-6Lab./299.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s Demm Auto Engineering Works, 72, Gurgaon *versus* Braham Dev. Parshad.---

IN THE COURT OF MRS. NIRMAL YADAV, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON.

Reference No. 72 of 1989.

between
SHRI BRAHAM DEV S/O SHR' RAM CHANDER C/O P. S. RAO, LABOUR LAW
ADVISOR, SHANTI NAGAR, NEAR NATIONAL HIGHWAY NO. 8, GURGAON
AND THE MANAGEMENT OF M/S. DEMM AUTO ENGINEERING WORKS, 72,
INDUSTRIAL AREA, MEHRAULI ROAD, GURGAON.

Present:

Shri P. S. Rao for the workman.

Shri S. K. Goswami for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act."), the Governor of Haryana referred the following dispute between the parties, mentioned above, to this Court, for adjudication, *-vide* Labour Department Government of Haryana endorsement No. 7027-32, dated 21st February, 1989:—

Whether termination of services of Shri Braham Dev is legal and justified? If not, to what relief is he entitled?

2. The facts according to petitioner's claim statement are that he was appointed with the respondent management w.e.f. 1st January, 1987 as helper at the salary of Rs 500 p.m. It is further submitted that petitioner's services were illegally terminated w.e.f. 10th October, 1988 in violation of mandatory provisions of Section 25F of the I. D. Act. According to petitioner a general demand notice was submitted by the workers on 7th October, 1988 and petitioner's services were terminated as a counterblast to the same.

3. Claim of petitioner is contested by the management stating that reference is bad in law. On merits, it is stated that petitioner was initially employed on 2nd April, 1988 but he submitted his resignation on 18th June, 1988 after taking full and final accounts. Petitioner again approached the management for job on 4th September, 1988. He was employed w.e.f. 6th September, 1988 and was discharged from service on 11th October, 1988. His wages were sent through money order to the last known address but the same was received back.

4. In view of the pleadings of the parties, following issue was framed on 2nd February 1990:—

Whether termination of services of Shri Braham Dev is legal and justified? If not, to what relief is he entitled?

5. I have heard learned authorised representatives of the parties. My findings on the issue framed are as under:—

6. In order to prove their case, management produced MW1 Shri Rajesh Kapahi, who stated that petitioner had joined, *-vide* letter Ex. M1. He had submitted application Ex. M2, declaration from Ex. M3 was also prepared on 2nd April, 1988. However, petitioner submitted his resignation Ex. M4 on 18th June, 1988. Which was accepted on the same day, *-vide* endorsement Ex. M4/A and letter Ex. M5. Petitioner had received his full and final accounts and executed receipt Ex. M6. According to witness, petitioner again submitted application Ex. M7 dated 4th September, 1988 and he was appointed, *-vide* agreement Ex. M8 w.e.f. 6th September, 1988. His F.S.I. form Ex. M9 was also filled on 6th September, 1988. Petitioner's services were discharged, *-vide* order simpliciter Ex. M10 dated 11th October, 1988. Order Ex. M10 was sent through registered post. Postal receipt is Ex. M11. Registered letter Ex. M12 was received back. Order of discharge was passed on the notice board of the factory gate. Witness categorically stated that petitioner had not completed 240 days service, therefore, he was not entitled to retrenchment benefits. He further stated that general demand notice of the workers was received by the management through Labour-cum Conciliation Officer on 11th October, 1988. When cross examined, witness denied that

petitioner was initially employed on 1st January, 1987. He denied having any knowledge if general demand notice was submitted before the Labour Officer-cum-Conciliation Officer on 7th October, 1988. It was further admitted that date of hearing of the said demand notice was fixed before the Labour Officer on 2nd November, 1988. He admitted that on the attendance register petitioner has been shown as absent on 10th October, 1988 and 11th October, 1988 and thereafter it is mentioned that he has been discharged. He denied the suggestion that petitioner's service have been terminated on account of submitting of general demand notice by the workers.

7. On the other hand, workman did not appear in the witness box in spite of several opportunities given to him. Learned A. R. of the workman only produced notice Ex. M1 and Ex. W3 and their postal receipt of the registered letter Ex. W2 and Ex. W4.

8. In this case, it is evident from documents Ex. M1 to Ex. M6 that petitioner was employed w. c. f. 2nd April 1988 and he submitted his resignation Ex. M4 on 18th July, 1988. He executed receipt Ex. M6 stating the he had taken his full and final accounts and that he had no right of reinstatement in service. There is no rebuttal of these documents and the statement of MW1 Rajes Kapani. Management also proved that petitioner again requested for appointment,—vide application Ex. M7 on 4th September, 1988, therefore he was appointed w. c. f. 6th September, 1988,—vide letter Ex. M8 which bears the signature of petitioner. Clause 2 of Ex. M8 clearly shows that petitioner was employed on probation for a period of three months and that during the probation period his service could be terminated at any time without notice. Consequently, his services were terminated on 11th October, 1988,—vide letter Ex. M8 which is discharged simpliciter. From documents Ex. M7 to Ex. M10, it is evident that petitioner had worked only for one month and five days and his services were terminated during probation period. Petitioner, therefore, was not entitled to receive any retrenchment benefits. The plea of the workman that his services were terminated as counter blast to the demand notice submitted by the workers is also not proved as no evidence has been produced to support this plea. Consequently, termination of services of the petitioner was legal and justified and petitioner is not entitled to any relief. Reference is answered and returned accordingly with no order as to cost.

NIRMAL YADAV,

Dated: 19th May, 1994

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endoresment No. 791-92, dated the 31st May, 1994.

A copy is forwarded to :—

1. The Labour Commissioner, Haryana, Chandigarh.
2. The Labour Officer Gurgaon.

NIRMAL YADAV,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6Lab./291.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s Kegg Farm, Khandisa Road, Gurgaon *versus* Workmen Kegg Group Employees Union.

IN THE COURT OF MRS. NIRMAL YADAV, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 235 of 1988

between

WORKMEN KEGG GROUP EMPLOYEES UNION DELHI ROAD AFFILIATED INTUC,
GURGAON

and

THE MANAGEMENT OF M/S. KEGG FARM, KHANDISA ROAD, GURGAON.

Present :

Shri P.S. Rao for the workmen.

Shri M.P. Gupta for the management.

AWARD

1. In exercise of the powers conferred by clause (d) of sub-section (i) of section 16 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following disputes between the parties mentioned above, to this Court, for adjudication,—vide Haryana Govt. Labour Deptt. andst No. 4746—51 dated 30th January 1987 :-

- (1) Whether the workmen are entitled to the uniforms ? If yes, with what details ?
- (2) Whether the workmen are entitled to the bonus @ 20% for the year 1984-85 ? If yes, with what details ?

2. The facts according to the claim statement of the petitioners are that employees of the respondent-management have their registered trade union. The said union submitted general demand notice dated 4th November, 1985 and raised certain demands against the management. In pursuance of the said demand notice, Government of Haryana referred the dispute regarding two demands i.e. supply of uniforms to the workers and payment of bonus @ 20% for the year 1984-85. According to petitioners financial position of the management is quite sound and it is earning huge profits for the last many years. It is stated that according to the balance sheet of the management for the year 1984-85, employees are entitled to receive bonus @ 20% of the wages of the employees in accordance with the provisions of the Bonus Act. As regards uniform it is stated that the job performed by the employees is very dirty and their clothes get spoiled and torn. Employees are unable to bear the expenses of the uniform, therefore, they should be provided with two pairs of uniform i.e. two pants, two shirts full sleeves every year.

3. Claim of the petitioners is controverted by the management stating that the demands have not been sponsored by substantial number of workmen therefore, no industrial dispute exists under section 2K of the I.D. Act. It is stated that management is a small scale industry and has paid bonus to its employees @ 8.33% for the year 1984-85. Allocable surplus available with the management for the year 1984-85 was less than 8.33%. Employees have received bonus for the year 1984-85 without any protest, therefore, they are now estopped to raise the demand for bonus in excess of 8.33%. It is further submitted that the job involved in the respondent establishment is of very light nature. Workman has to provide feed, water and vaccination to the birds. The nature of job is such that the clothes of the workman did not get spoiled. It is stated that financial position of the company does not allow to bear additional financial burden for providing uniform to its workers. No other industry situated in the locality is providing uniform to their workers. It is stated that uniform is only provided to Watchmen and Peons.

4. In their rejoinder, workmen reiterated their claim and controverted the pleas taken in the written statement. It is stated that financial position of the management is very sound and it has got branches all over India which are earning huge profits.

5. In view of the pleadings of the parties, following issues were framed on 1st May, 1987 :-

- (1) Whether the workmen are entitled to uniform ? If so, with what details ? OPW.
- (2) Whether the workmen are entitled to get the bonus @ 20% for the year 1984-85 ? If so, with what details ?
- (3) Whether the present dispute does not fall an industrial dispute within the meaning of section 2 (K) of the I.D. Act ? OI M.
- (4) Whether the workmen are estopped to raise the demand of bonus in excess of 8.33% already paid ? OPM
- (5) Whether the workmen have *locus standi* to raise the present dispute ?
- (6) Relief.

6. I have heard learned authorised representatives of the parties. My findings on the issues framed are as under :-

Issues No. 3 and 5 :

7. Learned A.R. of the management argued that present dispute does not fall under the definition of Industrial dispute as defined under section 2(k) of the I. D. Act as the disputes referred are not covered under the said definition. To my mind, argument of the learned A.R. does not have any force in view of the definition of the industrial dispute as defined under section 2 (k) of the I.D. Act. A perusal of the definition of industrial dispute as provided under section 2(k) of the Industrial Disputes Act, clearly shows that when there is any dispute or difference between the employer and his workmen in

connection with the employment or non employment or terms and conditions of the employment or conditions of service, such disputes fall under the definition of industrial dispute. In such a situation, a demand notice is sent by the workmen or a trade union to the employer. When the parties did not settle the dispute or fail to settle the dispute by direct negotiation, union or workmen may approach the conciliation authority. When no settlement is arrived at during conciliation proceeding, the appropriate Government decides whether dispute is fit for making reference for adjudication or not. If the Government finds that the dispute is fit for adjudication, it is referred to the Labour Court or Tribunal as the case may be. In present case, workers referred certain demands to the management after negotiation through conciliation authority. Matter ultimately went up to the State Government, which referred only two demands for adjudication i.e. regarding providing uniform and payment of bonus to the workers. Admittedly both the demands pertain to the service conditions of the workers, therefore, dispute is entirely covered under the definition of the industrial dispute as defined under Section 2(k) of the Industrial Disputes Act.

8. It is argued that union must authorise through a resolution or through a substantial number of workmen that the dispute has been sponsored by them. Demand notice is only signed by Shri S.P.S. Temar, who was not an employee of the respondent at the time of submitting the demand notice. Argument of the learned A.R. does not have any force as the demand notice was signed by Shri Mahavir Tyagi, Organiser of the INTUC. WW1 Shri Hari Paishad categorically stated that Kegg Farm Employees Union was a registered union and it was affiliated to INTUC. This fact is clearly proved from the copy of return Ex. 2, wherein column number 7, it is mentioned that the union is affiliated to INTUC and that affiliation fee was also paid. Therefore, I am of the view that petitioners have *locus standi* to file the present dispute.

Issue No. 1 :

9. In order to prove this issue, workman produced Lalan Singh WW2, who stated that workers are getting wages @ Rs. 250 P.M. According to him, nature of duty performed by the workers is very dirty. Worker has to broom and sweep the place. He has to pick up the litter of the birds. They have to carry feed on their back. Feed and water is further provided to the birds in their sheds. It is further stated that except the wages, management is not providing any allowance for maintenance of uniform. When cross examined witness categorically stated that employees of the management carry feed bags from the store to the sheds of the birds. They carry feed bags from trucks to the store. He further stated that feed is carried to the birds in their sheds in the buckets and from the buckets, feed is placed in trays with hands by the workers. Similarly, water is also carried in the buckets. He further stated that workers carry litter of the birds in the bags after brooming the sheds. Witness denied the suggestion that clothes of the workers did not get dirty while working in the Farm.

10. Management produced Munna Khan MW1, who was working with the management for the last 9 or 10 years. Witness stated that when anybody enters the Kegg Farm, he has to pass through the liquid mixture of potassium at the gate for disinfecting. He further stated that no employee can wear dirty clothes as emphasis is on the cleanliness in the Farm. According to him workers pick up eggs and provide feed and water to the birds. He further stated that feed is brought in the Carts, which is carried to the store by the workers of the farms. According to him, clothes do not get dirty while performing the above mentioned duty. When cross examined witness admitted that feed bags are carried by the workers on their back. He also admitted that litter of the birds is cleaned by the employees of the Farm. MW3 Dr. H.S. Maheshwari stated that he was working with the management in the year 1982 to 1987. According to him, whenever any body enters the premises of the Kegg Farm he has to pass through disinfectant pits. Management does not allow any employee to work with dirty clothes as chicks are likely to have infection. According to him, duty performed in the Farm are such that clothes of the employees did not get spoiled. According to him, litter of the birds mixes in the saw dust laid on the floor of the shed. Clothes of the employees did not get dirty while raking litter. He further stated that soap and potassium is kept near by so that employees can wash their hands. When cross examined, witness stated that litter of the birds remains in saw dust until it is taken out. He further stated that after about 1½ year whole saw dust which become poultry manure is taken out by the outside labour. He admitted that eggs laid by the hen are collected by the workers. He denied the suggestion that workers have to pick up litter of the birds in the basket or that they dump the same after picking it up from the sheds. He denied the suggestion that workers have to carry the feed bags on their shoulder back from store to the sheds. He denied that clothes of the employees get dirty or torn in the process of working. MW4 Shri Ram Lal stated that he is working as labourer in the Kegg Farm. According to him water is provided in to a drinker through a tap. Drinker is inside the shed. Worker did not carry water. He further stated that eggs are picked up and are taken to the egg house. He further stated that litter of the birds is collected with the brooms. He further stated that feed of the birds is carried from store to the shed. He denied the suggestion that feed bags are carried on the shoulder's back by the workers.

11. A.R. of the workmen argued that demand of two uniform per year is genuine as employees have to do manual work in the respondent farm. Their clothes get dirty while carrying feed's and raking a saw dusts in the sheds mixed with litter of the birds in the sheds. On perusal of evidence of WW2 Lallan

Singh MW1 Kunna Khan and MW3 I. H. S. Maheswari it is crystal clear that management is very emphatic in keeping cleanliness in the farm premises. It has come in their testimony that every worker has to pass through disinfectant pit before entering the premises. It is also stated by WW2 Lallan Singh, MW1 Munna Khan and MW4 Ram Lal that birds feed is kept in the store from where it was carried in the buckets to the sheds of the birds. Even water is carried in the buckets from the taps to the sheds. All the witnesses have stated that eggs are picked up manually from the sheds and after they are sent to egg house. Dr. Maheswari MW3, Munna Khan MW1 and Ram Lal MW4 stated that soap and potassium permanganate solution is kept for washing the hands of the workers. It is also admitted by MW4 Ram Lal and MW1 Munna Khan that litter of the birds is collected and raked from the saw dust in the shed. Lallan Singh WW1 stated that litter is carried by the workers and dumped at the dumping place. MW3 Dr. Maheswari stated that the litter is not broomed or raked. It remains in the saw dust until it is taken out and the saw dust is taken out after about 1 1/2 years. It is impossible to digest the statement of Dr. Maheswari that litter would remain in the saw dust for about 1 1/2 year without raking, becoming and removing from saw dust it would start smelling. Dr. Maheswari himself admitted that litter along with saw dust become poultry manure. These facts clearly shows that workers have to broom rake and remove the litter from the sheds of the birds. They carry feed and water to the shed. All these duties would certainly spoil and damage the clothes of the workers and as such, their demand for the uniform is justified. Management has heartedly taken a plea that their financial position is not strong for providing uniform to the workers. At the same time it is admitted in their written statement that uniform is provided to Watchmen and Peons. In these circumstances, it is held that workers are entitled to get two uniforms annually.

Issues No 2 and 4

12. In order to prove these issues, workman Lallan Singh stated that management is earning huge profits. However, they have only paid bonus @ 8.33%. When cross examined, witness stated that he had never seen balance sheet of the management. On the other hand, management produced Shri S.S. Rawat, Deputy Manager, who stated that respondent management was a partnership firm upto 31st August, 1985, but it was converted into a private limited company w.e.f. 1st September, 1985. It is further stated that profit and loss account and balance sheet is maintained which is checked by their Chartered Accountants. Witness produced balance sheets Ex. MW2/1 to Ex. MW2/4 for the period commencing from for the years 1982 to 1985. He also produced copies of the bonus register Ex. MW2/5 to Ex. MW2/12 which are stated to be maintained in accordance with the Bonus Act in form A & B. Witness further produced copies of the bonus computation bonus allocable charge Ex. MW2/13 to Ex. MW2/16. Shri Rawat produced a summary of the allocable surplus for the years 1982 to 1985, which is Ex. MW2/17. According to witness Farm suffered losses in the years 1981-82 and 1982-83, therefore, allocable surplus for payment of bonus during these years was nil. However, allocable surplus was available in the year 1983-84 and 1984-85, but it was less than the required amount of bonus. During the years 1981-82 and 1982-83 amount of bonus was set off. In the year 1984-85 allocable surplus was Rs. 2,97,234.00 whereas set off amount for the years 1981-82, 1982-83 and 1983-84 was Rs. 2,53,396.00 after adjusting the set off amount only Rs. 43,886.00 was left as allocable surplus, which was much less than the statutory bonus to be paid @ 8.33%. The amount of bonus payable for the year 1984-85 was Rs. 1,90,928.00 which is evident from the copy of bonus register Ex. MW2/12. He further stated that balance sheets were checked by the Auditor and were found to be in order. When cross examined, witness stated that balance sheet Ex. MW2/3 does not bear his signature, nor it was audited in his presence. He further stated that balance sheets produced in the Court pertain to the whole Karg Farm Group and not of the Khandsa Farm only. Learned A.R. of the management argued that since allocable surplus available in the year 1984-85 was less than the statutory amount minimum bonus payable @ 8.33% therefore, employees were not entitled to bonus more than 8.33%. Management had already paid bonus @ 8.33% to the tune of Rs. 1,90,928, whereas amount of Rs. 43,886.00 was only available as allocable surplus.

13. Claim of bonus depends on the availability of the allocable surplus, which is calculated on the basis of balance sheet prepared by the employer. According to section 4 of the Bonus Act gross profit shall be calculated as specified in Second Schedule of the Act and from such gross profit sums known as prior charges referred to in Section 6 of the Act shall be deducted subject to the provisions of Section 5 & 7 of the Act to derive the allocable surplus in respect of the accounting year. The prior charges as specified are in respect of depreciation, development rebate, or investment allowance, direct taxes and other sums as specified in Third Schedule of the Act, employees are entitled to get 60% of such available surplus as bonus. The amount of bonus payable to the employees for the accounting years is known as allocable surplus. Section 15 of the Bonus Act further provides that where for any accounting year the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment then the excess shall subject to a limit of 20% of the total salary or wage of the employees in the establishment in that accounting year be carried forward for being set off in the succeeding accounting year to be utilised for the purpose of payment of bonus. However, in any accounting year, where the available surplus or available surplus falls short of the amount of minimum bonus payable to the employees and there is no amount carried forward and set off which could be utilised for the purpose of minimum bonus then such deficiency shall be carried forward for being set off in the succeeding accounting year up to an inclusive of the 4th accounting year. Management has produced their balance sheets Ex. MW2/1 to Ex. MW2/4 copies of the bonus register Ex. MW

2/5 to Ex. MW2/12 and the copies of bonus computation/bonus allocable chart Ex. MW2/13 to Ex. MW2/16. A perusal of these documents shows that there was no allocable surplus in the years 1981-82, therefore, amount of bonus payable was carried forward for being set off in the next year. Even in the year 1982-83 allocable surplus was nil, therefore, amount of statutory bonus payable to the employees was carried forward for being set off. In the year 1983-84 allocable surplus was Rs. 1,34,532.00 and the amount of statutory bonus payable to the employees was Rs. 1,47,655.00, as such Rs. 1,31,23.00 was carried forward for set off. In the year 1984-85 allocable surplus with the employer was Rs. 2,97,234.00 and the amount of statutory bonus payable was Rs. 1,90,928.00. However, the set off amount was Rs. 2,53,396.00 for the last three accounting years, as such management had only Rs. 43,838.00 as allocable surplus after deducting the set off amount of the previous year. In these circumstances management paid bonus at the statutory rate of 8.33%. Admittedly bonus @ 8.33% has already been paid to the employees. The balance sheets regarding profit and loss account of the management produced before this Court certainly carries presumption of correctness as specified under section 23 of the Bonus Act. Workmen have failed to produce any evidence in rebuttal to the evidence produced by the management regarding accounts and balance sheets maintained by the management and as such, I presume the documents placed on file to be correct. In view of the above discussion, it is held that workmen are not entitled to bonus @ 20% of their wage of the year 1994-95.

14. As discussed above, management has rightly paid bonus at the statutory rate of 8.33% which was accepted and received by the employees, therefore, employees are estopped to raise the demand of payment of bonus in excess of 8.33%.

Issue No. 6

15. In view of my findings on issue No. 1 it is held that workers are entitled to get two uniforms annually. Reference is answered and returned accordingly with no order as to cost.

The 17th May, 1994.

NIRMAL YADAV,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endst. No. 803-04, dated 31st May, 1994.

A copy is forwarded to :-

1. The Labour Commissioner Haryana Chandigarh.
2. The Labour Officer Gurgaon.

NIRMAL YADAV,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6Lab./298.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s. Demm Auto Engineering Works, 72, Gurgaon *Versus* Sukh Ram Singh;

IN THE COURT OF MRS. NIRMAL YADAV, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 87 of 1989

SHRI SUKH RAM SINGH, SON OF SHRI SOBHA RAM SINGH, C/O SHRI P.S. RAO, LABOUR LAW ADVISER, SHANTI NAGAR, NATIONAL HIGHWAY NO. 8, GURGAON
... Workman

And

THE MANAGEMENT OF M/S DEMM AUTO ENGINEERING WORKS 72 INDUSTRIAL AREA,
MEHRAULI ROAD, GURGAON.

Present :

Shri P.S. Rao, for the workman.

Shri S.K. Goswami, for the management,

AWARD

1. In exercise of the powers conferred by clause (c) of sub section (i) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following disputes, between the parties, mentioned above, to this Court, for adjudication, — vide Haryana Government, Labour Department endorsement No. 7448-53, dated 22nd February, 1989.

Whether termination/retranchment of services of Shri Sukh Ram is legal and justified ? If not, to what relief is he entitled ?

2. The facts according to petitioner's claim statement are that he was appointed with the respondent w.e.f. 1st January 1987 at the salary of Rs. 586 per month. It is stated that management illegally terminated petitioner's service w.e.f. 11th October, 1988 in violation of the mandatory provisions of the Industrial Disputes Act, 1947. Petitioner submitted that a general demand notice in this connection is pending before the Labour Court.

3. Claim of the petitioner is contested by the management stating that reference is bad in law. On merits, it is submitted that petitioner was appointed w.e.f. 1st July, 1988 on probation for a period of three months and that he was discharged from service on 11th October, 1988 in accordance with the terms and conditions of his appointment letter. Management categorically denied that petitioner was employed w.e.f. 1st January, 1987.

4. In his rejoinder, petitioner reiterated his claim and controverted the pleas taken in the written statement. In view of the pleadings of the parties, following issues were framed on 6th November, 1989 :-

1. Whether termination/retranchment of services of Shri Sukh Ram is legal and justified ? If not, to what relief is he entitled ?

2. Whether the reference is bad in law ?

5. I have heard learned Authorised Representatives of the parties. My findings on the issues framed are as under :-

Issue No. 2 :

6. No evidence was produced nor any argument have been addressed by the management on this issue, therefore, this issue is decided against the management.

Issue No. 1 :

7. In order to prove their case, management produced MW1 Shri Rajesh Kapahi, Manager. Witness produced application dated 3rd July, 1988 Ex. M1 submitted by the petitioner for appointment. He produced agreement Ex. M2, which was executed between workman and the management on 5th July, 1988. Petitioner's ESI declaration form copy of which is Ex. M3 was also prepared on 5th July, 1988. Petitioner's services were discharged, — vide order simpliciter on 11th October, 1988, copy of the order is Ex. M4. Witness further stated that petitioner's dues were sent through money order, receipt is Ex. M5, which was received back with the report Ex. M6 to the effect that addressee was not available. Shri Rajesh Kapahi stated that discharge order was sent to the petitioner through registered letter, postal receipt of the same is Ex. M7 and the copy of the A.D. is Ex. M8. Witness stated that petitioner had not completed 240 days service which with the management. He further stated that general demand notice of the workers was received on 11th October, 1988. When cross examined, witness categorically stated that petitioner had worked for three months and few days only. He further stated that management do not regularise the service of the worker initially. Before regularising service of a worker, his suitability is judged. He denied the suggestion that service of petitioner and other workers were terminated as counter blast on account of the worker raising of submitted general demand notice. Witness admitted that workers had staged dharna in front of factory for two days. They were demanding that Grinder Singh and other workers should be taken back in service.

8. On the other hand, in spite of several opportunities given, petitioner did not appear as a witness, nor he produced any other witness in his support. Authorised Representative of the workman had produced documents Ex. W1 to W4. Ex. W1 is a legal notice sent by representative of the workers through registered letter, postal receipt of which is Ex. W2 and copy of the demand notice dated 15th October, 1988 which was sent through registered post, copy of postal receipt is Ex. W4.

9. From the documents Ex. M1 to Ex. M4, it is evident that petitioner was appointed with the management w.e.f. 5th July, 1988. Appointment letter Ex. M2 bears the signature of the petitioner. Order Ex. M4 shows that petitioner's services were terminated w.e.f. 11th October, 1988 as no longer required. Petitioner was appointed on probation for a period of three months. He only worked w.e.f. 5th July, 1988 to 11th October, 1988 as such, he worked for three months and six days only with the respondent management. Documents Ex. W1 and Ex. W3 do not prove the plea of the management that his services were terminated as a

counter blast to a general demand notice submitted by the workers. Petitioner also failed to appear as witness to support his plea that he worked with the management w.e.f. 1st January, 1937 to 11th October, 1988. Petitioner has not continuously worked with the management for 240 days, therefore, management was no duty bound to comply with the provisions of Section 25F of the Industrial Disputes Act, 1947. In these circumstances, termination of services of the workman was legal and justified, Petitioner is not entitled to any relief. Reference is answered and returned accordingly with no order as to cost.

The 18th May 1994.

NIRMAL YADAV,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 793 94, dated The 31st May, 1994.

A copy is forwarded to :-

1. The Labour Commissioner, Haryana, Chandigarh.
2. The Labour Officer, Gurgaon.

NIRMAL YADAV,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6 Lab./300.- In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s North India Distilleries, Pvt. Khujri *versus* Chatter Pal.

IN THE COURT OF MRS. NIRMAL YADAV, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 45 of 1992

between

CHATTAR PAL, S/O SHRI MOOL CHAND, C/O SHRI MURLI KUMAR, GENERAL SECRETARY, 5/1, SHIVAJI NAGAR, GURGAON.

.. Workman

and

THE MANAGEMENT OF M/S. NORTH INDIA DISTILLERIES PVT., LTD., KHUJRI (DHARUHERA), DISTRICT REWARI

.. Management

Present :

Shri Murli Kumar, for the workman.

None, for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, (in short "the Act"), the Governor of Haryana referred the following dispute, between the parties, mentioned above, to this Court, for adjudication,—*vide* Haryana Government Labour Department Endorsement No. 3325-30, dated 17th January, 1992.

Whether termination of services of Shri Chatter Pal is legal and justified ? If not, to what relief is he entitled ?

2. The facts according to petitioner's demand notice are that he was appointed as driver with the respondent-management, w.e.f. 27th October, 1986 @ Rs. 850 p. m. It is further stated that his services were terminated w. e. f. 12th July, 1991 in violation of the mandatory provisions of I. D. Act, 1947.

3. On notice, management appeared and was represented by Shri O. P. Kaushal. Management did not appear on 24th April, 1992, therefore, management was proceeded against *ex parte*. Thereafter, on the application filed by the management, *ex parte* proceedings were set aside subject to payment of Rs. 500 as cost. Management was granted 2-3 opportunities to submit their written statement, but neither written statement was filed, nor cost of Rs. 500 was paid. Ultimately, management did not appear on 14th January, 1994 and was again proceeded *ex parte*.

4. In this *ex parte* evidence, workman reiterated his claim and stated that he had continuously worked with the management w. e. f. 27th October, 1987 to 12th July, 1991 when his services were terminated,—vide letter Ex. W1. According to workman, he was only issued chargesheet and was placed under suspension, thereafter, no information was given by the management. Management did not pay any subsistence allowance, nor conducted any enquiry. According to petitioner, management illegally terminated his services without affording any opportunity to defend himself against the allegations levelled in the chargesheet. Petitioner further stated that no retrenchment compensation or notice etc. was given to him before terminating his service.

5. From the facts and documents on record, it seems that petitioner's services were terminated after holding *ex parte* enquiry. Petitioner has categorically stated that except issuing chargesheet no information is given to him by the management regarding holding of enquiry, therefore, it is apparent that management terminated petitioner's service in violation of principle of natural justice. Consequently, termination order Ex. W1 is illegal and not justified and is hereby set aside. Petitioner is ordered to be reinstated into his job with continuity of service and full back wages. Reference is answered and returned accordingly with no order as to costs.

The 4th May, 1994

NIRMAL YADAV,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 819-20, dated 31st May, 1994

A copy is forwarded to :-

1. The Labour Commissioner, Haryana, Chandigarh.
2. The Labour Officer, Rewari.

NIRMAL YADAV,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6 Lab./301.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of the Manager, H.S.D.C., Haily Mandi, *versus* Ashok Kumar.

IN THE COURT OF MRS NIRMAL YADAV, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 15 of 1988

Between

SHRI ASHOK KUMAR C/O HIND MAZDOOR SABHA (HMS), PLOT NO. 42, SECTOR 6, FARIDABAD
AND THE MANAGEMENT OF THE MANAGER, HARYANA SEEDS DEVELOPMENT CORPORATION LTD, HAILY MANDI (PATAUDI), DISTRICT GURGAON

Present:—

Shri R. L. Gupta for the workman.

Shri D.S. Tewatia for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute, between the parties, mentioned above, to this Court, for adjudication,—vide Haryana Government, Labour Department, ondst. No. 13259—64, dated 1st April, 1988 :—

Whether termination/retrenchment of services of Shri Ashok Kumar is legal and justified? If not to what relief is he entitled?

2. The facts according to the petitioner's claim statement are that he was appointed as Salesman with the respondent management w.e.f. 4th October, 1916 at the salary of Rs. 844 p.m. It is stated that work and conduct of the petitioner was satisfactory during the period of his service. However, management illegally retrenched petitioner's service without assigning any reason. No prior notice was given to the petitioner, nor retrenchment compensation was paid to him. According to petitioner, persons junior to him have been retained in service while petitioner's services have been retrenched. The action of the management is against the principles of natural justice. Therefore, petitioner be reinstated with all consequential benefits.

3. Claim of the petitioner is controverted by the management. It is stated that petitioner's services were retrenched on account of closure of the units of the management. It is stated that petitioner was offered retrenchment compensation, but he did not accept the same. Moreover, petitioner was to pay a sum of Rs. 4500 to the management. It is stated that retrenchment is in accordance with the legal provisions of law.

4. In his rejoinder, petitioner reiterated his claim and controverted the pleas taken in the written statement. In view of the pleadings of the parties, following issue was framed on 28th October, 1988 :—

Whether termination/retrenchment of services of Shri Ashok Kumar is legal and justified? If not, to what relief is he entitled?

5. I have heard learned authorised representatives of the parties. My findings on the issues framed are as under :—

6. In order to prove their case, management produced Shri R.B. Sharma, Manager of the respondent, who stated that petitioner was appointed as Salesman on 19th February, 1987 on ad hoc basis,—vide appointment letter Ex. M1. He also produced retrenchment order Ex. M2, copy of the seniority list Ex. M3 and letter Ex. M4,—vide which retrenchment compensation was sent to the petitioner. Witness also produced Ex. M5, photocopy of the cheques dated 29th March, 1988 sent to the petitioner by registered envelope Ex. M6. He further stated that petitioner refused to accept the registered letter. Witness produced Ex. M7 copy of the judgement in case of Chanchal Kumar. He further stated that management had deposited Rs. 2003.00 before the Labour Officer, Sector 7, Faridabad. When cross examined, witness stated that petitioner was relieved from duty on 10th February, 1988 from Pataudi. He admitted that petitioner was not paid or offered retrenchment compensation at the time of retrenchment, but a cheque of Rs. 1275.73 was sent to him on 29th March, 1988. He further admitted that no notice or pay in lieu thereof was sent to him. Notice pay was adjusted against the advance already issued to him. Witness admitted that no intimation was sent to the petitioner regarding the amount of Rs. 2003.00 deposited in the office of the Labour Officer—cum—Conciliation Officer, Ballabgarh. Witness admitted that amount of retrenchment compensation was not sent to the workman at the time of retrenchment. Witness admitted that judgement Ex. M7 does not show that the said judgement is binding upon Sh. Ashok Kumar. He further stated that copy of the writ petition filed by Shri Chanchal Kumar can be produced in the Court. He admitted that the respondent department has strength of more than 100 employee. He stated that he did not have any knowledge whether any permission was taken from the Government, regarding retrenchment. Witness expressed ignorance if any seniority list was displayed before terminating petitioner's service. He denied the suggestion that petitioner's services have been illegally terminated as he was not junior most employee in the seniority. Management produced copy of the writ petition Ex. M8.

7. On the other hand, workman appeared as WW1 and reiterated his claim. He produced order, Ex. W1,—vide which his services were retrenched. He categorically stated that management did not give any notice or pay in lieu thereof, nor retrenchment compensation was given to him. He further stated that he did not file any application or petition in the Hon'ble High Court regarding termination of his service. He denied the suggestion that management has terminated his service on account of closure of Tohana Unit. He denied the suggestion that seniority list was given to him or that his services have been illegally retrenched. Petitioner admitted that he had taken advance of Rs. 4500 which was deposited by him,—vide draft Ex. WW3.

8. Learned A.R. of the workman argued that respondent management had failed to comply with the mandatory provisions of Section 25N of the I.D. Act. in as much as retrenchment compensation was not paid to him at the time of retrenchment, nor any notice was given to the petitioner. Learned A.R. further argued that no prior permission of the appropriate Government was obtained by the management before retrenchment of petitioner's service. Learned A.R. of the workman argued that it is admitted by MW1 Shri

R.B. Sharma that there were more than 100 employees with the respondent, therefore, provisions of Section 25N were to be complied with at the time of retrenchment of petitioner's service. Learned A.R. further argued that no seniority list as contemplated under Rule 76 of the Industrial Disputes (Punjab) Rules 1958 was displayed on the notice board. In support of his argument learned A.R. referred to judgement of Hon'ble High Court 1992-II SLR, page 253, Lakshmi Pandit *versus* Presiding Officer, Industrial Tribunal and others, 1991 (4) SLR page 11 Gulzar Singh, *versus* Presiding Officer, Labour Court and another. On the other hand, learned A.R. of the management argued that petitioner's services were retrenched as per requirement required on account of closure of Tohana unit. Petitioner was juniormost employee, therefore, his services were retrenched.

9. In this case, it is admitted case that management has more than 100 employees, therefore, provision of chapter V-B would be applicable. Section 25N of the I.D. Act read as under:—

(1) No workman employed in any industrial establishment to which this Chapter applied, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until.

(a) the workman has been given three month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereinafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

10. Sub-section 7 of Section 25N provided that where no application for permission under Sub-Section (1) is made, such retrenchment shall be deemed to be illegal from the date on which, notice of retrenchment was given to the workman and workman shall be entitled to all the benefits under any law for the time being as if no notice had been given to him. Shri R.B. Sharma admitted that petitioner was not paid or offered retrenchment compensation nor he was given pay in lieu of notice at the time of retrenchment. A sum of Rs. 1275.73 was sent to him on 29th March, 1988, whereas his services were retrenched on 10th February, 1988 as the retrenchment compensation was not paid simultaneously with the retrenchment of his service. He also admitted that there are more than 100 employees with the respondent department and the employees are transferable from one place to another. He denied having any knowledge if seniority list was displayed at the place of petitioner's posting before his termination. He also denied having any knowledge whether any permission was taken from the State Government regarding retrenchment of petitioner's service. Copy of the writ petition Ex. M-5 filed by Chanchal Kumar does not help the respondent in any manner was not a party to the same and it is not binding on him. From the above mentioned facts, it is apparent that management did not make any offer of payment of retrenchment compensation, nor he was given any notice or pay in lieu thereof as provided under Section 25N of the I. D. Act. It is established principle of law that compliance of provisions of Section 25F in case management having less than 100 employees and the provisions of Section 25N in case of the management having more than 100 employees is mandatory at time of retrenchment of service of a workman. Admittedly, management has not complied with the mandatory provisions of Section 25N. Even provisions of Rule 76 which requires that employer shall prepare a seniority list of all the workmen and cause a copy thereof to be pasted on the notice board have not been complied. A specific suggestion was given to MW1 Shri R. B. Sharma if any seniority list was displayed before retrenchment of petitioner's service, but he denied having any knowledge of seniority list having been displayed. There is nothing on record to prove that seniority list Ex. M3 was displayed on the notice board or it was sent to the petitioner before retrenchment of his service. In view of the above discussion, I am of the view, that the order of retrenchment of the petitioner is in violation of the provisions of the I. D. Act. 1947 and Rules, therefore, the same is set aside. Petitioner Ashok Kumar is ordered to be reinstated into his job with continuity of service and full back wages. Reference is answered and returned accordingly with no order as to cost.

The 25th April, 1994.

NIRMAL YADAV,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endst. No. 580-81, dated 29th April, 1994.

A copy is forwarded to :—

1. The Labour Commissioner, Haryana, Chandigarh.
2. The Labour Officer, Gurgaon.

NIRMAL YADAV,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.